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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,937	01/22/2002	Jan Herman Zicha		3863

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EXAMINER

JULES, FRANTZ F

ART UNIT PAPER NUMBER

3617

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/050,937

Applicant(s)

ZICHA, JAN HERMAN

Examiner

Frantz F. Jules

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 21-24 is/are rejected.
- 7) ☒ Claim(s) 25-29 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claim 21 is rejected under 35 U.S.C. 102(e)(1) as being anticipated by Sonnevile et al (US 6,364,214 B1).

Claim 21

Sonneville et al disclose an internally resilient railroad tie comprising two blocks (3) independent of each other under separate rail, placed in a concrete tie case (4), each block is placed in an elastomeric boot (1) having an elastomeric bottom pad (2) is supplied and applied in various values of stiffness to compensate for lack of excess of overall track stiffness. The internally resilient tie apparatus being equipped with rail fastenings as seen in fig. 1, and made of materials of such densities and of components

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of such dimensions that naturally occurring support irregularities of the track can be compensated for by the installation and maintenance processes which vary the spring rate and dynamic response of the internally resilient tie apparatus to compensate for the effect of site-specific variations of the track's foundation materials, since the elastomeric pad will allow adjustment of the track, so that the dynamic track/train interaction response of a track equipped with a sequence of internally resilient ties is improved.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by McCallum (US 814,796).

Claim 22

McCallum discloses an internally resilient railroad tie comprising two blocks (b) independent of each other under separate rail, placed in a steel tie case (n). The internally resilient tie apparatus being equipped with rail fastenings constituted by flanges (b2) and made of materials of such densities and of components of such dimensions that naturally occurring support irregularities of the track can be compensated for by the installation and maintenance processes which vary the spring rate and dynamic response of the internally resilient tie apparatus to compensate for the effect of site-specific variations of the track's foundation materials, since the elastomeric

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pad will allow adjustment of the track, so that the dynamic track/train interaction response of a track equipped with a sequence of internally resilient ties is improved.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCourt (US 1,214,339) in view of Sonnevile et al (US 6,364,214).

Claim 23

McCourt discloses an internally resilient railroad tie apparatus equipped with block retainers (14) in concrete railroad tie cases so as to hold blocks (12) including which are received in the tie cases for supporting rails forming complete rail tie assemblies, said apparatus comprising: a device (15, 18) for retaining the blocks in the tie apparatus such that said rail tie assemblies may be lifted and moved by rail during track installation and maintenance, and for releasing the blocks from the ties when the elastomeric pad or the boot has to be replaced or removed.

McCourt discloses all of the features as listed above but does not disclose an apparatus comprising a block including a boot with an elastomeric pad positioned at the bottom of said boot. The general concept of providing a block including a boot with an elastomeric pad positioned at the bottom of said boot in a resilient railroad tie apparatus is well known in the art as illustrated by Sonnevile et al which discloses the teaching of

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a block (3) including a boot (8) with an elastomeric pad (2) positioned at the bottom of said boot in a resilient railroad tie apparatus, see fig. 5. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify McCourt to include the use of a block including a boot with an elastomeric pad positioned at the bottom of said boot in his advantageous resilient railroad tie apparatus as taught by Soneville et al in order to improve the damping characteristics of the railroad assembly thereby reducing noise.

7. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCourt in view of McCallum (US 814,796) and Sonneville et al (US 6,364,214).

Claim 24

McCourt discloses all of the features as listed above but does not disclose an apparatus comprising a block including a boot with an elastomeric pad positioned at the bottom of said boot in a steel railroad tie case. The general concept of providing a tie case made of steel or of cast iron in a railroad tie assembly is well known in the art as illustrated by McCallum which discloses in column 1, lines 24-29, a rail tie case made of steel. Also, The general concept of providing a block including a boot with an elastomeric pad positioned at the bottom of said boot in a resilient railroad tie apparatus is well known in the art as illustrated by Sonneville et al which discloses the teaching of a block (3) including a boot (8) with an elastomeric pad (2) positioned at the bottom of said boot in a resilient railroad tie apparatus, see fig. 5. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify McCourt to include the use of a block including a boot with an elastomeric pad positioned at the bottom of said boot

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in his advantageous resilient railroad tie apparatus as taught by Soneville et al in order to improve the damping characteristics of the railroad assembly thereby reducing noise. In addition, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sonneville et al to include the use of a tie case made of steel or of cast iron in his advantageous resilient railroad tie as taught by Mccallum in order to reduce maintenance cost in the system while increasing its ability to withstand shock load.

Allowable Subject Matter

8. Claims 25-29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. None of the prior arts of record suggests an internally resilient railroad tie having a releasable device for retaining the blocks in the tie members, wherein the block retainers comprise a cast iron insert equipped with an anchor member for anchorage in the concrete tie, and with a curved slot at the top of the anchor member to receive leaf springs that are secured by a vertical pin inserted into aligned holes on top of the anchor member in the manner defined in the instant claims 25-26.

Response to Arguments

9. Applicant's arguments filed 07/28/2004 have been fully considered but they are moot in view of the new grounds of rejection and of the objection of claims 25-29. New broader claims 21-22 are properly rejected over the Sonnerville et al and McCallum reference as they disclose internally resilient tie apparatus comprising blocks

that are supported into a recess of a track in such a way as to allow self-adjustment in response to site specific variations.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-8780. The examiner can normally be reached on Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano can be reached on (703) 308-0230. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frantz F. Jules
Primary Examiner
Art Unit 3617

FFJ

October 29, 2004

FRANTZ F. JULES
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Frantz F. Jules', written over a horizontal line.